

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-88-FDW**

RONALD McCLARY,

Plaintiff,

vs.

BELQUIS HOPKINS, et al.,

Defendants.

ORDER

THIS MATTER is before the Court on *pro se* Plaintiff's "Writ of Mandamus," (Doc. No. 80), and Motion for Leave to Respond to Defendant Anthony Searles' Answer, (Doc. No. 77).

Plaintiff's "Writ of Mandamus" is in the nature of a motion for reconsideration of the Order Denying Default Judgment, (Doc. No. 63), and will be construed as such.¹ See generally United States v. Morgan, 346 U.S. 502, 505 (1954) (construing a petition for writ of error coram nobis as a motion seeking and order to void the judgment; "In behalf of the unfortunates, federal courts should act in doing justice if the record makes plain a right to relief."). In it, Plaintiff argues that Defendant David Mitchell has been evading service and that the Court should not tolerate Defendant's conduct. Plaintiff's contention that Defendant Mitchell has not been served is incorrect. He executed a service waiver that was filed on June 11, 2018, and his answer is due on August 10, 2018 See (Doc. No. 68).

Plaintiff's Motion for Leave to Respond to Defendant Searles' Answer is denied as premature. The scheduling order has not yet been answered. Plaintiff will have the opportunity to

¹ Plaintiff must file a petition for writ of mandamus addressing this Court's actions to the Fourth Circuit Court of Appeals. See 28 U.S.C. § 1651; In re Va. Elec. & Power Co., 539 F.2d 357, 365 (4th Cir. 1976) (the All Writs Act authorizes circuit courts to issue writs of mandamus to the district courts within the circuit).

engage in discovery, file dispositive motions, and respond to any dispositive motions filed by Defendants. He is discouraged from engaging in piecemeal filings which will clog the docket and may distract the Court from meaningful pleadings.

IT IS THEREFORE ORDERED that:

- (1) Plaintiff's "Writ of Mandamus," (Doc. No. 80), is construed as a motion for reconsideration and is **DENIED**.
- (2) Plaintiff's Motion for Leave to Respond to Defendant Anthony Searles' Answer, (Doc. No. 77), is **DENIED**.

Signed: August 13, 2018

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

